

Amendment  
Serial No. 09/784,707  
Attorney Docket No. 030229

**REMARKS**

Claims 1-4, 7, 8, 10-32, 39, 40 and 46 are pending. Claim 1 is amended and new claim 46 is added.

Claims 1-4, 7, 8, 10-32, 39 and 40 were rejected under 35 USC §112, first paragraph, as allegedly failing to comply with the written description requirement. The Examiner considers “ordinary” in modifying the term “maize” as not being expressly supported by the specification or inherently disclosed. Favorable reconsideration is respectfully requested.

The amended claims do not use the term “ordinary.” Accordingly, withdrawal of the rejection is earnestly solicited.

Claims 1-4, 7, 8, 10-32, 39 and 40 were rejected under 35 USC § 103(a) as being unpatentable over Altieri. This rejection is respectfully traversed.

The Examiner has failed to raise a prima facie rejection of the claims. The claims require that the structured or the complexed starch is a natural starch derived from a member selected from the group consisting of potato, wheat, maize (new claim 46 only) and tapioca starch. Altieri does not teach these starches, and actually teaches away from use of these starches. Specifically, at column 4, beginning at line 4, Altieri stresses that the starting starch material must be a high amylose starch, i.e., one containing at least 45% by weight of amylose. The Examiner appears to confuse the claimed invention with Altieri’s invention. That is, Altieri’s invention is directed to a starting starch material having at least 45% by weight of amylose.

Furthermore, Altieri teaches that starches from different sources have different relative portions of amylose and amylopectin components. Altieri mentions potato, corn, tapioca and rice as being characterized by the different relative portions of the amylose and amylose components. Altieri further emphasizes that certain varieties of corn which normally contain about 22-28% amylose have been developed which yield starch composed of over 45% amylose. These hybrid varieties as specifically taught by Altieri, “have been referred to as high amylose or amylo maize” (column 4, lines 21-23). Thus, Altieri makes a distinction between the relatively low amylose content corn starch (normal corn) and the corn starches composed of over 45% amylose (known as high amylose or amylo maize). Therefore, the claimed “maize” is distinct from the high amylose or amylo maize, as taught and confirmed by Altieri.

Altieri also makes reference to “Starch: Chemistry and Technology” at column 4, lines 61-66. A copy of this publication was submitted to the Examiner with the response filed on April 8, 2004. This publication also emphasizes the difference between corn (ordinary maize or maize) containing 28% amylose and amylo maize containing over 45% amylose.

Since Altieri fails to teach all of the limitations of the claims, particularly the specific claimed starches, Altieri fails to suggest the claimed invention. Furthermore, Altieri teaches away from use of the claimed starches.

Claim 1 has been amended to remove “maize” and new claim 46 has been added as a separate independent claim which specifies only maize. Altieri fails to teach or suggest the

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invention set forth in claim 1. Furthermore, Altieri fails to teach or suggest use of maize as set forth in claim 46. As noted above, maize is distinct from amylo maize employed by Altieri.

The Examiner's argument has been noted that Altieri lacks an express teaching of properties set forth in the claims but that such properties would have been anticipated since Altieri teaches the same subject matter. However, the Examiner erroneously characterizes Altieri as teaching the same subject matter since Altieri does not teach the claimed starches and actually teaches away from the claimed starches. Therefore, the Examiner's argument that the properties would be inherent has no basis.

For at least the foregoing reasons, the claimed invention distinguishes over the cited art and defines patentable subject matter. Favorable reconsideration is earnestly solicited.

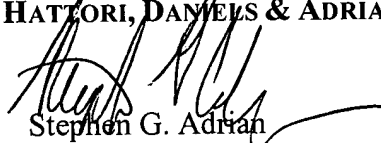
Should the Examiner deem that any further action by applicants would be desirable to place the application in condition for allowance, the Examiner is encouraged to telephone applicants' undersigned attorney.

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If this paper is not timely filed, Applicants respectfully petition for an appropriate extension of time. The fees for such an extension or any other fees that may be due with respect to this paper may be charged to Deposit Account No. 50-2866.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Stephen G. Adrian", is written over the printed name.

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Attachment: Petition for Extension of Time